IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 593 OF 2004

Shri Dattatray Raghunath Raut ... Appellant (Ori.Plaintiff)

V/s

Manik @ Madhukar Raghunath Raut & ors. ... Respondents (Ori.Defendants)

Miss Alpa Javeri for the appellant.

Mr. Nishigandh N. Patil for the respondent No.1.

CORAM: P.V. KAKADE, J.

DATED: 17TH JUNE, 2005

P.C.:

1. This appeal is preferred by the appellant against the judgment and order passed by the Addl. Dist. Judge, Raigad dated 5.1.2004 dismissing the appeal and confirming the judgment and order passed by the Civil Judge (J.D.), Raigad dated 23.2.1998 dismissing the suit which was filed by the appellant-plaintiff for removal of encroachment over his property.

2. I have heard the learned counsel for both parties. Perused the record.

The only issue involved in this dispute was in respect of alleged encroachment by the defendants over the plaintiff's property by constructing a bathroom, a latrine and a septic tank. In order to ascertain whether there was in fact an encroachment of the suit property, the Trial Court appointed the Court Commissioner and his map as well as report was brought on record. The Court Commissioner was also examined as a witness. However, the learned Trial Judge came to the conclusion that the entire evidence pertaining to the Court Commissioner's map and report was not satisfactory and it is recorded that initially the intimation of Court Commissioner's work was not given to the defendants. That apart, while doing the necessary work, the Court Commissioner did not fix the boundaries of the property of the concerned parties and also was not in a position to tell the location of latrine and septic tank. He was also not in a position to justify the fact as to when he measured the suit land. In other words, the Court Commissioner's report was totally discarded by the learned lower Court. This finding is upheld by the lower appellate Court Judge. Evidently, there is absolutely no other evidence on record to show that there is an encroachment as alleged by the plaintiff and, therefore, both the Courts below, after recording

the concurrent findings to the effect that the plaintiff has not proved his case, dismissed the appeal.

3. The learned counsel for the appellant submitted that, under the circumstances, the matter be remanded to the lower Court. However, it must be noted that, it is not a fit case to remand the matter in order to allow the parties to fill in the lacuna of the evidence causing prejudice to the other side and, therefore, I am not inclined to remand the matter.

4. Time and again, the Apex Court has held that the concurrent findings of facts, whosoever erroneous, cannot be disturbed by the High Court in exercise of the powers conferred under Sec.100 of the C.P.C. It is not within the domain of the High Court to investigate into the findings arrived at by the last Court of fact, being the first appellate Court. In view of this position, if this ratio is applied to the present case, it is quite clear that both the Courts below have correctly appreciated the available evidence on record which is pertaining to the issues of facts and there is no substantial question of law involved in the dispute.

5. In the result, the appeal stands dismissed.

(P.V. Kakade, J.)